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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER MOORE,

Defendant and Appellant.

A131931

(San Francisco City & County
Super. Ct. Nos. 206810, 212261)

A jury found appellant Christopher Moore guilty of felony evasion of a police officer. (Veh. Code,¹ § 2800.2, subd. (a).) Based on the same evidence that the jury considered, a court also revoked his earlier grant of probation. He was sentenced to two years in state prison for the new conviction and to a concurrent term of three years for the offense for which he had been granted probation. On appeal from both judgments, Moore contends that there was insufficient evidence of a key element of the evasion offense—that he saw or reasonably should have seen a red lamp atop a police car during a chase. He reasons that this error requires the reversal of both judgments. (See §§ 2800.1, subd. (a)(1), 2800.2, subd. (a).) We affirm both judgments.

¹ All statutory references are to the Vehicle Code unless otherwise indicated.

I. FACTS

A. 2008 Drug Possession

In September 2008, appellant Christopher Moore was charged with possession of cocaine base for sale at his San Francisco home.² (Former Health & Saf. Code, § 11351.5 [Stats. 1987, ch. 1174, § 3, p. 4155].) He pled guilty with the understanding that he would be given a grant of probation. In October 2008, imposition of sentence was suspended and Moore was placed on probation for three years, subject to a search condition.

On March 27, 2009, Moore was arrested in San Francisco for receiving stolen property. (Former Pen. Code, § 496, subd. (a) [Stats. 1997, ch. 161, § 1, pp. 797-798].) At the time of his arrest, he owned a red Cadillac. In May 2009, he admitted violating the terms of his probation. Probation was modified and extended to December 2011.

On April 20, 2010, Moore was arrested in San Francisco and charged with several offenses related to possession of a firearm.³ (See pt. I.B., *post.*) Two days later, his probation was administratively revoked. Hearing on the motion to revoke was repeatedly continued until Moore's trial on new charges. The motion to revoke was heard concurrently with the trial on those new charges. (See pt. I.D., *post.*)

B. 2010 Evading Police and Weapon Possession

Back on April 4, 2010, San Francisco police saw Moore driving the red Cadillac. After a high speed chase, Moore eluded police. (See pt. I.C., *post.*) On April 18, 2010, San Francisco police spotted Moore driving a red Cadillac at a high rate of speed in another San Francisco neighborhood. Again, the police chased him, but ultimately lost the car.

On April 20, 2010, Moore was wanted on the evasion charges. In downtown San Francisco, Moore realized that police officers were following him. Police later testified

² Moore—then age 18—was on juvenile probation and subject to a search and seizure condition at the time of his arrest.

³ This was one of six new arrests for Moore during the term of probation beginning in October 2008.

that he tossed a nine-millimeter Smith and Wesson firearm into a trash can as he fled. Moore was arrested and the weapon was retrieved from the trash.

In May 2010, Moore was charged by information with three felony weapon offenses stemming from the April 20, 2010 incident—being a convicted person in possession of a firearm, carrying a loaded firearm and having a concealed firearm. (Former Pen. Code, §§ 12021, subd. (a)(1) [Stats. 2008, ch. 599, § 4], 12025, subd. (a)(2) [Stats. 1999, ch. 571, § 2, pp. 3961-3963], 12031, subd. (a)(1) [Stats. 2009, ch. 288, § 1]; see Pen. Code, §§ 25400, subd. (a)(2), 25850, subd. (a), 29800, subd. (a)(1) [added by Stats. 2010, ch. 711, § 6].) Based on the April 4 and April 18 incidents, he was also charged with counts of evading a police officer while driving with willful and wanton disregard for the safety of persons and property. (§ 2800.2, subd. (a).) The information also alleged his 2008 prior conviction. Moore pled not guilty and denied the allegation.

In December 2010, a first amended information was filed, eliminating two of the three weapon charges. The amended information charged Moore with possession of a firearm by a felon and two counts of evading police. A motion to sever the weapon charge from the other two charges was denied. Moore's motion to suppress evidence of the weapon was denied. (Pen. Code, § 1538.5.)

C. Trial of 2010 Charges⁴

At the January 2011 trial on the weapon and evading charges, the parties stipulated that Moore had been convicted of possession of cocaine base for sale in October 2008. The jury was also told that he did not have a valid driver's license in April 2010.

San Francisco Police Officer Antron Barron testified that in April 2010, he and his partner Officer David Colclough had been patrolling Western Addition housing projects for several years. In that assignment, both officers had come to know Moore, who was often seen in a red Cadillac. On the afternoon of Sunday, April 4, 2010, it was raining. Officer Barron was on duty and in uniform, as were Officer Colclough and Sergeant Manuel Bonilla who accompanied him. Officer Colclough drove a black and white

⁴ As the trial court dismissed the charges stemming from the April 18 and 20 incidents, our statement of facts does not discuss the evidence relating to those events.

Crown Victoria patrol car equipped with light and sirens. Sergeant Bonilla sat in the front passenger seat, with Officer Barron directly behind him.

About 2:15 p.m., Officer Colclough was driving southbound on Webster Street approaching the Grove Street intersection. He and Officer Barron saw a red Cadillac that Moore had often driven. The Cadillac had stopped facing northbound and then backed up 10 to 15 feet toward the Webster and Grove Streets intersection. The patrol car pulled up closer to the Cadillac but facing the opposite direction. Officers Barron and Colclough both recognized Moore as the driver of the red Cadillac. Officer Colclough knew that Moore was on probation. They both knew that Moore's driver's license had been suspended. Officer Barron made eye contact with Moore, who turned his head away and sped off northbound on Webster Street, about 40 to 50 miles per hour.⁵

Officer Colclough completed a U-turn and began pursuing the Cadillac, siren sounding and red lights activated. He told the jury that the lights are visible from the front of the patrol car. At this point, the Cadillac was almost a block ahead of the patrol car. On Webster Street heading toward Fulton Street, the road is level or somewhat downhill. At a red light at Fulton Street, Moore slowed down—but did not come to a stop—and then turned right from Webster Street onto Fulton Street. The police followed him. Moore drove 50 to 60 miles per hour eastbound on Fulton Street, passing Buchanan Street and heading toward Laguna Street. At a red light at the next intersection, Moore made a right turn onto Laguna Street without stopping. Moore was now moving southbound, with the police still following. During the two blocks that Moore travelled along Fulton Street, Officer Colclough's patrol car was about a block behind him. Officer Barron could not see Moore's face during this time.

When the patrol car got to the intersection at Fulton and Laguna Streets, on Sergeant Bonilla's order, Officer Colclough turned off the lights and siren. The police continued to follow Moore's car, which began pulling further away from them. The siren off, Officer Colclough made a right turn onto Laguna Street. Officer Barron saw

⁵ The normal speed limit in this area was 25 or 35 miles per hour.

Moore—still driving at a high rate of speed—go through a stop sign at the intersection of Laguna and Grove Streets without stopping. He drove another block past Ivy Street, running the stop sign at Laguna and Hayes Streets. Before he got to the next major intersection at Laguna and Fell Streets, Moore crossed over into oncoming traffic to pass another vehicle, and then ran a red light at the intersection. Approaching the next intersection at Laguna and Oak Streets, the red Cadillac again crossed into oncoming traffic again and made a left turn against the red light. As Moore moved down Oak Street, police lost sight of him.

Until Moore pulled away from them, the police were a half block to a block away from the Cadillac during the pursuit. In all, the patrol car's lights were on 10 to 15 seconds, while the car moved two blocks along Fulton Street between Webster and Laguna Streets. During these two blocks, Officer Colclough's patrol car was about a block from Moore's Cadillac.

After the People completed the case-in-chief, Moore moved for acquittal on the two evading police charges. Defense counsel argued that there was no evidence that a light was visible from the front of the patrol car, but the trial court denied the motion. (Pen. Code, § 1118.1.)⁶ The jury was instructed on the proper use of circumstantial evidence. It was told that it could draw inferences from that evidence; that it could only accept reasonable inferences; and that it was required to acquit if it could draw two or more reasonable inferences and one of them pointed to innocence.

During closing argument, the prosecution reasoned that the jury could infer from the evidence that Moore reacted to the lights and siren and that he must have seen the light. He also argued that the siren would have drawn Moore's attention to the light, such that he should have seen it. Defense counsel argued that the People had not offered any evidence to support a finding that Moore saw or reasonably should have seen the light during the two blocks that it might have been visible. She noted that the prosecution failed to put on any photographic evidence of the view from the Cadillac to the patrol car.

⁶ The defense case focused primarily on charges that were ultimately dismissed, and thus is not relevant to the issue pending before us on appeal.

Defense counsel argued that the jury could not speculate about this—that there must be evidence to support this element of the offense. Without that evidence, Moore must be acquitted of the evading charge, she reasoned. She also reasoned that Moore’s driving was consistent—that it was unchanged after the siren and lights went on.

In January 2011, the jury found Moore guilty of evading a peace officer on April 4, 2010. (§ 2800.2, subd. (a).) It was unable to reach a verdict on the other evading police charge or the weapon offense. The trial court declared a mistrial on those charges and, on the People’s motion, these charges were dismissed. The trial court denied Moore’s request for a grant of probation. On March 18, 2011, he was sentenced to a midterm of two years in state prison for the new conviction.

D. Probation Revocation on 2008 Conviction

In March 2011, the trial court conducted a contested probation revocation hearing, hearing argument from counsel about the pending motion. It considered the evidence adduced at trial underlying the evading police conviction as evidence on the motion to revoke probation. It found by a preponderance of evidence that Moore violated the terms of his probation, based on the evidence of the April 4, 2010 incident. On March 18, 2011—the same day that it imposed sentence on the 2010 evading police conviction—the trial court also sentenced Moore to a concurrent three-year term in state prison on the 2008 drug possession conviction.

II. SUFFICIENCY OF EVIDENCE

On appeal, Moore contends that there is insufficient evidence to prove that he actually saw or reasonably should have seen Officer Colclough’s red lamp. A criminal conviction that is unsupported by substantial evidence is one rendered in violation of a defendant’s federal and state due process rights. (*People v. Rowland* (1992) 4 Cal.4th 238, 269; see U.S. Const., 14th Amend.; Cal. Const., art. I, § 15.) Moore reasons that this error undermines both the jury verdict and the revocation of probation.

The driver of a motor vehicle who flees or attempts to elude a pursuing peace officer commits a misdemeanor. (§ 2800.1, subd. (a).) If the vehicle is driven in a manner that displays a willful or wanton disregard for the safety of people or property,

the offense may constitute a felony. (§ 2800.2, subd. (a).) To establish that Moore fled or attempted to elude police, the prosecution was required to prove several elements, only one of which is in dispute on appeal. That element requires that when a police officer's motor vehicle exhibits at least one lighted red lamp visible from the front, there must be evidence that the pursued driver saw or reasonably should have seen the lamp. (§ 2800.1, subd. (a)(1); *People v. Hudson* (2006) 38 Cal.4th 1002, 1007-1008.)

We view the evidence in the light most favorable to the jury's verdict and presume in support of those findings the existence of every fact that one could reasonably deduce from the evidence. We determine whether the record discloses substantial evidence that is reasonable, credible, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Elliot* (2005) 37 Cal.4th 453, 466; *People v. Johnson* (1980) 26 Cal.3d 557, 576; see *People v. Rowland*, *supra*, 4 Cal.4th at p. 269.) We may not reweigh or reinterpret that evidence. (*People v. Pace* (1994) 27 Cal.App.4th 795, 798.) When reviewing the jury's verdict, we determine whether substantial evidence supports the jury's finding, not whether evidence proves the finding beyond a reasonable doubt. (See *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Crittenden* (1994) 9 Cal.4th 83, 139.) The same standard applies if the People relied on circumstantial rather than direct evidence. (*People v. Story* (2009) 45 Cal.4th 1282, 1296.) Even if circumstantial evidence could reasonably be reconciled with a contrary finding, reversal is unwarranted. (*Ibid.*; *People v. Stanley* (1995) 10 Cal.4th 764, 793.) Unless the testimony is physically impossible or inherently improbable, even the testimony of one witness is sufficient to support a jury verdict of guilt. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) We may not set aside a verdict for insufficiency of evidence unless it appears that under no hypothesis is there sufficient evidence to support it. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Moore challenges both the jury verdict and the revocation of probation. A criminal conviction must be based on evidence beyond a reasonable doubt. (Pen. Code, § 1096.) The prosecution bears the burden of proving the merits of a motion for probation revocation by a preponderance of evidence. (*People v. Rodriguez* (1990)

51 Cal.3d 437, 439, 447.) The decision whether or not to revoke a grant of probation rests in the sound discretion of the trial court. That discretion is very broad but must be based on the facts before it. (*People v. Zaring* (1992) 8 Cal.App.4th 362, 378.) If there is sufficient evidence to support the jury's verdict, then the revocation of probation was within the trial court's discretion. (See *ibid.*; *People v. Smith* (1970) 12 Cal.App.3d 621, 626.)

On appeal, we must presume in support of the jury's verdict the existence of every fact that can be reasonably deduced from the evidence. (*People v. Smith* (2005) 37 Cal.4th 733, 738-739; *People v. Snow* (2003) 30 Cal.4th 43, 66.) A jury has a duty to acquit a defendant if circumstantial evidence is capable of two interpretations, one of which suggests guilt and the other innocence. However, the jury—not our court on appeal—must be convinced of Moore's guilt. Even if we believed that the evidence was also consistent with a contrary finding, we may not reverse the jury's verdict. (See *People v. Story, supra*, 45 Cal.4th at p. 1296.)

Contrary to Moore's claim, the jury did not speculate; it drew an inference. In this matter, the jury heard evidence from which it could have found that a light visible from in front of Officer Colclough's patrol car was lit and his siren was sounding during the time it took that car to go two blocks on Fulton Street. Moore was a block ahead of the patrol car. During the one block that Officer Colclough's car was in Moore's line of sight as both vehicles traveled along Fulton Street, a marked police patrol car with its sirens blaring followed the speeding red Cadillac. The evidence that the prosecution offered would allow a jury to reasonably infer that during the period when both cars were on Fulton Street, the siren would have alerted a reasonable person to the presence of Officer Colclough's patrol car and would have prompted a reasonable person to glance in that direction, such that a reasonable person in Moore's situation would have seen the red lamp on the patrol car. (See *People v. Story, supra*, 45 Cal.4th at p. 1296; *People v. Young, supra*, 34 Cal.4th at p. 1181; *People v. Stanley, supra*, 10 Cal.4th at p. 793.) The inference raised by the prosecution's evidence satisfies the statutory requirement of proof that Moore saw or reasonably should have seen the lighted red lamp. (§ 2800.1,

subd. (a)(1).) As there was sufficient evidence to support the jury's finding of guilt, both the conviction and the revocation of probation were consistent with due process.

The judgments are affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.